

2010

State of Utah v. Laree Hansen : Brief of Appellee

Utah Court of Appeals

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Case No. 20100522-CA

IN THE
UTAH COURT OF APPEALS

State of Utah,
Plaintiff/ Appellee,

vs.

Laree Hansen,
Defendant/ Appellant.

Brief of Appellee

Appeal from a conviction of illegal use or possession of a controlled substance, in the Second Judicial District Court of Utah, Weber County, the Honorable Michael D. Lyon presiding.

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Case No. 20100522-CA

IN THE
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State of Utah,
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Laree Hansen,
Defendant/ Appellant.

Brief of Appellee

STATEMENT OF JURISDICTION

Defendant appeals from a conviction of illegal use or possession of a controlled substance, a third degree felony, in violation of Utah Code Ann. § 58-37-8 (West Supp. 2009). This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West 2009).

STATEMENT OF THE ISSUES

Did the trial court properly deny Defendant's motion to suppress?

Standard of Review. "Whether the trial court erred in denying [a] motion to suppress is a mixed question of law and fact. [The appellate courts] review the trial court's conclusions of law non-deferentially for correctness, and its factual findings for clear error." *State v. Nimer*, 2010 UT App 376, ¶ 5, 672 Utah Adv. Rep. 13 (citations omitted); *see also State v. Harker*, 2010 UT 56, ¶ 8, 240 P.3d 780 ("issues

regarding the constitutionality of arrests and searches present questions of law that [the appellate courts] review for correctness.”

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following relevant constitutional provision and statutes are included in

Addendum A:

U.S. Const. amend. IV;

Utah Code Ann. § 76-9-701 (West Supp. 2010) (intoxication);

Utah Code Ann. § 76-6-206 (West Supp. 2010) (criminal trespass).

STATEMENT OF THE CASE

The State filed an information charging Defendant with intoxication, a class C misdemeanor; possession of drug paraphernalia, a class B misdemeanor; possession of a controlled substance (methamphetamine), a third degree felony; and possession of a controlled substance (marijuana), a class B misdemeanor. R1-2; *see also* R5-6 (probable cause affidavit). Defendant filed a motion to suppress evidence. R37-38; *see also* R29-36 (Defendant’s memorandum in support of motion); R39-40 (State’s memorandum in opposition to Defendant’s motion). The court set the matter for an evidentiary hearing. R49-50. At the hearing, defense counsel stipulated that the matter could be resolved without testimony, and the court set it for oral argument. *See id.* At oral argument, defense counsel stated that the facts were not in dispute, both parties presented argument, and the trial court denied the motion. R51-52; *see also* R80 (transcript of oral argument hearing).

Defendant then entered a guilty plea to possession of methamphetamine, a third degree felony, reserving the right to appeal the denial of her motion to suppress. R53-58 (plea statement); 59-60. The State dismissed the other counts. *Id.* The trial court imposed an indeterminate prison term not to exceed five years, suspended execution of the sentence, and imposed 36 months' probation, including a 180-day jail term. R68-70.

Defendant timely appealed. R66.

STATEMENT OF THE FACTS¹

At about 1:49 a.m. on September 7, 2009, Officer Justin Gorman and Officer Daniel Froerer, responded to a complaint of a burglary in progress at an Ogden residence. R82:4. The complainant, Robert Soto, had reported to dispatch that "he was hiding in the bathroom of his grandmother's house because he believed there was someone inside the house." *Id.* Robert called a second time to report that two "unknown males [were] inside the residence trying to kick in the bathroom door to get inside." *Id.* He also said that his grandmother was somewhere in the house and had told him to lock himself in the bathroom. *Id.*

¹ The undisputed facts are set forth in Officer Justin Gorman's September 7, 2009 police report, included in the record at R82, attached in *Addendum C*.

When Officer Gorman arrived, he checked around the residence, but found all of the doors locked, all of the windows secured, and no sign of forced entry. *Id.* When Officer Froerer arrived, Officer Gorman knocked on the front door. R82:5. The home owner, Irene Chavez, answered immediately. *Id.* She was startled to see the officers and asked why they were there. *Id.* Officer Gorman explained the situation. *Id.* Irene told them that her grandson, Robert, was upstairs taking a shower. *Id.* She invited them inside and took them upstairs where they saw Robert exit the bathroom wearing a towel around his waist. *Id.* Robert said that he had heard some noises outside the bathroom door, called for Irene, heard no answer, and “started getting scared because of ‘all the gang stuff that [had] been going on’ and thought they were after him.” *Id.* “Robert seemed very strange and kept pacing back and forth” *Id.*

As Officer Gorman was speaking to Robert and Irene, “someone started banging loudly on the back patio door which scared Irene.” *Id.* Officer Gorman “went to the back door and observed a female individual peering inside through the glass door.” *Id.* He opened the door and “the female stepped back and began walking around the small deck in quick jerky steps. The female was clutching a small black purse tightly to her body and kept looking around jerking her head back and forth.” *Id.* Officer Gorman asked what she was doing and she said “she was [there] to see Robert.” *Id.* Officer Gorman asked her to sit down on a bench on the

deck and asked for her name. *Id.* She said her name was Laree Hansen “with a DOB of 07-01-60.” *Id.*

Laree, now the defendant in this case, “kept squirming around on the bench and could not sit still.” *Id.* Based on her movements and behavior, Officer Gorman observed that “she appeared to be acting like someone under the influence of METH.” *Id.* He then asked when she had last used drugs, and she said “it was a while ago.” *Id.* He asked what drugs she was then on, and she stated “she wasn’t on any drugs.” *Id.* He asked if she had any drugs in her purse, and she “immediately stood up off the bench and started walking towards the door.” *Id.*

Irene “apparently recognized Laree and yelled from inside the house ‘I don’t want her anywhere around my house.’” *Id.* Officer Gorman asked Laree to sit back down, “but she pushed past [him] and ran into the house heading inside to one of the upstairs bedrooms. [He] followed [her] inside the bedroom and [he] watched as [she] place[d] her purse underneath the bed, then . . . stood up and acted like everything was normal.” *Id.* “Irene was yelling from behind [him] for Laree to get out of her house . . .” R82:6. Officer Gorman told Laree to get her purse, and Laree pulled it out from under the bed. *Id.* Irene said that she did not “want to pursue criminal charges against Laree and only wanted Laree out of her house.” *Id.* Officer Froerer and Officer Gorman escorted Laree outside. *Id.* As she walked, Officer Gorman “noticed that she was swaying and couldn’t seem to walk straight.” *Id.*

“Once outside [Officer Gorman] asked Laree if she had used METH [that day] and she . . . admitted she had.” *Id.* Based on her actions and her admission, he placed her “under arrest for Public Intoxication for being a danger to herself and others.” *Id.* He searched Laree and her purse incident to the arrest and inside her purse “found a discolored glass pipe with a bulb on the end of it that, based on [his] training and experience as a Police Officer, appeared to be a pipe commonly used to smoke METH with.” *Id.* He also found “a small plastic baggy that contained a white crystal substance that appeared to be consistent with METH,” “another plastic baggy that contained a green leafy substance that looked and smelled consistent with Marijuana,” “[n]umerous small plastic baggies with white residue,” and “3 small silver colored spoons that had a white residue on them.” *Id.*

Officer Gorman transported Laree to the Weber County Jail where he read her *Miranda* rights to her. *Id.* She agreed to talk to him. *Id.* She told him that “she and Robert [had] smoked METH together a couple of hours [before] at Robert’s house.” *Id.* She told him that the white crystal substance was methamphetamine, the green leafy substance was marijuana, and they belonged to her. *Id.* She said that she used the glass pipe for smoking methamphetamine. *Id.* She would not say where she got the drugs. *Id.* She then changed her story and said that Robert had planted the drugs on her and that they belonged to him. *Id.*

Officer Gorman booked Laree into jail for public intoxication, possession of methamphetamine, possession of marijuana, and possession of drug paraphernalia. *Id.* He booked the substances and the paraphernalia into evidence. The white crystal substance weighed approximately 0.4 grams and the green leafy substance weighed approximately 1.5 grams. *Id.* He tested the crystal substance with a narcotics identification kit, which showed a positive result for methamphetamine. *Id.*

SUMMARY OF ARGUMENT

Defendant challenges the trial court's denial of her motion to suppress the evidence found in her purse during the search incident to arrest. Defendant argues the arresting officer lacked probable cause to arrest her, the arrest was consequently "unlawful," and the search incident to the arrest therefore violated the Fourth Amendment. Defendant cannot prevail on this claim because the officer had probable cause to believe that Defendant had committed or was committing a crime.

Probable cause justifies an arrest where the facts and circumstances known to police would justify a prudent person in believing that the suspect has committed, is committing, or is about to commit an offense. Here, the facts and circumstances known to the arresting officer were sufficient to warrant a prudent person's believing that Defendant had committed intoxication in a public place, intoxication in a private place, or criminal trespass. Probable cause to believe that Defendant

had committed any one of these offenses sufficed to justify the arrest, regardless of the officer's subjective reason for making the arrest.

ARGUMENT

BECAUSE POLICE HAD PROBABLE CAUSE TO BELIEVE THAT DEFENDANT HAD COMMITTED A CRIME, DEFENDANT'S ARREST AND THE SEARCH INCIDENT TO ARREST WERE "LAWFUL" UNDER THE FOURTH AMENDMENT

Defendant first claims that the arresting officer "lacked probable cause to effectuate an arrest for public intoxication" or "for trespass" and that the trial court consequently erred by denying her motion to suppress. Br. Appellant at 17, 22 (boldface, capitalization, and underlining omitted). Defendant cannot prevail on this claim because the officer had probable cause to arrest her for intoxication in a public place, intoxication in a private place, or criminal trespass. Whether he believed he had probable cause to arrest her for those offenses is irrelevant to the "lawfulness" of the arrest under the Fourth Amendment.

Relevant law. The admissibility of evidence obtained in a search incident to arrest depends upon whether or not the arrest was "lawful" under the Fourth Amendment. *State v. Harker*, 2010 UT 56, ¶ 19, 19, 240 P.3d 780. Citing the recent United States Supreme Court decision in *Virginia v. Moore*, 553 U.S. 164, 174-48 (2008), the Utah Supreme Court has clarified that "all the Constitution requires for

an arrest to be 'lawful' is for the arrest to be based on probable cause." *Harker*, 2010 UT 56, ¶ 19.

"The United States Supreme Court has repeatedly defined probable cause as 'facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing . . . that the suspect has committed, is committing, or is about to commit an offense.'" *Id.* at ¶ 20 (quoting *Michigan v. De Fillippo*, 443 U.S. 31, 37 (1979)). "Whether probable cause exists depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of the arrest." *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004) (citing *Maryland v. Pringle*, 540 U.S. 366, 371 (2003)). But, except for the facts the officer knows, "an arresting officer's state of mind . . . is irrelevant to the existence of probable cause." *Id.* at 153 (citing *Whren v. United States*, 517 U.S. 806, 812-13 (1996)). "That is to say, [the officer's] subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause." *Id.* (citations omitted). In other words, if probable cause exists to support an arrest for some offense, the arrest is "lawful" for Fourth Amendment purposes. *See id.* This is true even if the officer believes the suspect has committed a different offense. *See id.* at 153-55.

Analysis. The question here is whether the facts and circumstances within Officer Gorman's knowledge were sufficient to warrant a prudent person's belief

that Defendant had committed, was committing, or was about to commit an offense. *See Harker*, 2010 UT 56, ¶ 20; *see also Michigan v. De Fillippo*, 443 U.S. at 37. Here, the facts were sufficient to warrant the officer's believing that Defendant had committed or was committing three different offenses: (1) intoxication in a public place; (2) intoxication in a private place, and (3) criminal trespass. But all that was required to establish probable cause was knowledge of facts and circumstances sufficient to warrant the officer's believing that Defendant had committed or was committing any one of the offenses, whether or not the officer actually believed he was committing that offense.

The intoxication statute. Statutory law provides that “[a] person is guilty of intoxication if the person is under the influence of alcohol, a controlled substance, or any substance having the property of releasing toxic vapors, to a degree that the person may endanger the person or another, in a public place or in a private place where the person unreasonably disturbs other persons.” Utah Code Ann. § 76-9-701(1) (West Supp. 2010). The Utah Supreme Court has held that the statute thus “establishes two different levels of intoxication, depending on whether the individual is in a private or public place. Under the public intoxication statute, an individual is ‘guilty of intoxication’ in a public place if [she] is ‘under the influence of alcohol [or a controlled substance] . . . to a degree that [she] may endanger [herself] or another.” *Due South v. Dep’t of Alcoholic Beverages*, 2008 UT 71, ¶ 33, 197

P.3d 82 (footnote omitted). She is “‘guilty of intoxication’ in a private place if [she] is ‘under the influence of alcohol [or a controlled substance] . . . to a degree that [she] . . . unreasonably disturbs other persons.’” *Id.* (footnote omitted); *see also State v. Henderson*, 2007 UT App 125, ¶ 11, 159 P.3d 576 (stating that legislature distinguished between intoxication in public places and intoxication in private places).

Intoxication in a public place. Here, the facts and circumstances in Officer Gorman’s knowledge were sufficient to warrant a reasonable belief that Defendant had committed or was committing intoxication in a public place. Based on the undisputed evidence, the officer saw Defendant outside the patio door of Irene Chavez’s home, “walking around the small deck in quick jerky steps,” “clutching a small black purse tightly to her body,” and “looking around jerking her head back and forth.” R82:5. After Officer Gorman asked her to sit down, she “kept squirming around on the bench and could not sit still.” *Id.* She “appeared to be acting like someone under the influence of [methamphetamine].” *Id.* Her conduct was erratic. When asked whether she had any drugs in her purse, she “immediately stood up off the bench and started walking towards the door.” *Id.* Moreover, even though Irene yelled from inside that she did not want Defendant anywhere around her house, and even though the officer asked Defendant to sit back down, Defendant “pushed past [the officer] and ran into the house heading inside of one of the upstairs

bedrooms,” where she placed her purse under the bed and then “stood up and acted like everything was normal.”” *Id.* “[S]he was swaying and couldn’t seem to walk straight.” R82:6. Then, after being escorted out of the home but before being arrested, Defendant admitted that she had used methamphetamine that day. *Id.*

Under these circumstances, the Officer had probable cause to believe that Defendant was intoxicated to a degree where she might endanger herself or another. Her movements suggested she was under the influence of methamphetamine. She ignored the direction of others, acted irrationally, and her movements were jerky and apparently uncontrolled. Under these circumstances, the officer had probable cause to believe that she might trip and fall on the stairs coming down from the deck or somewhere else, injuring herself, or walk into or trip someone else, injuring the other person.

Moreover, the officer had probable cause to believe that she had committed, was committing, or was about to commit intoxication in a public place. The officer was justified in believing that Defendant was either in a public place when on the deck outside Irene Chavez’s home or had been in a public place just before stepping off any public access to the home and that she was under the influence of methamphetamine to a degree where she might endanger herself or others at that time.

Intoxication in a private place. In addition or alternatively, the facts and circumstances known to Officer Gorman sufficed to warrant a reasonable belief that Defendant had committed or was committing intoxication in a private place. As explained above, the facts justified a belief that Defendant was under the influence of methamphetamine. Moreover, they justified a belief that she was under the influence to a degree that she unreasonably disturbed others. Defendant, in fact, entered Irene Chavez's residence without permission and despite Irene's yelling out that she did not want Defendant anywhere around her house. R82:5. Moreover, Defendant was not amenable to persuasion. After Irene yelled out that she did not want Defendant anywhere around her house, Officer Gorman asked Defendant to sit back down, but Defendant instead "pushed past [him] and ran into the house heading inside to one of the upstairs bedrooms. [He] followed [her] inside the bedroom and [he] watched as [she] place[d] her purse underneath the bed, then . . . stood up and acted like everything was normal." *Id.* In fact, Officer Gorman and Officer Froerer had to escort her out of the home. *Id.* All of this provided probable cause to believe that she was intoxicated to such a degree that she unreasonably disturbed others. Finally, the disturbance took place in a private place — inside Irene Chavez's home.

Trespass. Defendant further argues that the facts and circumstances known to the officer did not warrant a belief that she had committed or was committing

criminal trespass. *See* Br. Appellant at 22. She argues that “the officer did not see a factual basis at the time to arrest her for trespass or he certainly would have arrested her for it.” *Id.* But, as explained above, the officer’s subjective belief about whether he had probable cause to arrest her for trespass is not determinative. *See Devenport*, 543 U.S. at 152-55. Rather, the determinative question is whether the objective facts and circumstances known to him sufficed to establish probable cause. *See id.* Here, those facts and circumstances warranted a belief that Defendant had committed or was committing criminal trespass.

A person commits criminal trespass when “knowing [her] entry or presence is unlawful, the person enters or remains on property as to which notice against entering is given by . . . personal communication to the actor by the owner” Utah Code Ann. § 76-6-206(2)(b) (West Supp. 2010). Here, Defendant both entered and remained on the property after Irene Chavez, the owner, had yelled from inside the house, “I don’t want her anywhere around my house.” R82:5. Moreover, as Officer Gorman was following Defendant inside the bedroom and watching her place her purse beneath the bed, “Irene was yelling from behind [him] for [Defendant] to get out of her house.” R82:6. The facts and circumstances thus sufficed to warrant a reasonable belief that Defendant had entered and remained in the house after Irene had personally communicated to her that she should not enter. Defendant thereby knew that her entry into and remaining within the home were

unlawful, and consequently there was probable cause to believe that Defendant had committed and was committing criminal trespass.

Defendant argues that “Irene subsequently revoked any sort of trespassory interest when she told the officer that she did not want to pursue charges against [Defendant].” Br. Appellant at 24. Defendant claims, without citing any support, that “if an owner tells the police that she does not want a person charged for trespass, then she has communicated her intent to revoke her trespassory interest in the property.” Br. Appellant at 24. But Irene never withdrew her demand that Defendant stay out of her house. Irene merely indicated that she did not want to press charges. R82:6. Whether Irene did or did not want to press charges was irrelevant to whether the officer had probable cause to believe that Defendant had committed or was committing criminal trespass. *Cf. State v. Miner*, 2006 WL 2406246, *2 (Minn. App. 2006) (unpublished) (attached in *Addendum B*) (under totality of the circumstances, person of ordinary care and prudence would entertain honest and strong suspicion that defendant was involved in felony car theft giving rise to probable cause for arrest; fact that complaining witness later declined to press charges irrelevant to circumstances that existed at time of arrest).

Thus, if the circumstances sufficed to warrant Officer Gorman’s belief that Defendant had committed or was committing intoxication in a public place,

intoxication in a private place, or criminal trespass, they sufficed to support his arrest of Defendant.


Defendant's only challenge to the admissibility of evidence of the search at trial was his claim that the officer lacked probable cause for arrest. Where the evidence demonstrates that the officer had probable cause, Defendant cannot show that the trial court erred by denying her motion to suppress.

CONCLUSION

For the foregoing reasons, the Court should affirm Defendant's conviction.

Respectfully submitted January 25, 2011.

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CERTIFICATE OF SERVICE

I certify that on January 25, 2011, two copies of the foregoing brief were

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A digital copy of the brief was also included: ☒ Yes ☐ No

Melissa Freyer

Addenda

Addendum A

U.S. Const. amend IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

76-9-701. Intoxication -- Release of arrested person or placement in detoxification center.

(1) A person is guilty of intoxication if the person is under the influence of alcohol, a controlled substance, or any substance having the property of releasing toxic vapors, to a degree that the person may endanger the person or another, in a public place or in a private place where the person unreasonably disturbs other persons.

(2) (a) A peace officer or a magistrate may release from custody a person arrested under this section if the peace officer or magistrate believes imprisonment is unnecessary for the protection of the person or another.

(b) A peace officer may take the arrested person to a detoxification center or other special facility as an alternative to incarceration or release from custody.

(3) If a minor is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court:

(a) shall order the minor to participate in an educational series as defined in Section **41-6a-501**; and

(b) may order the minor to participate in a screening as defined in Section **41-6a-501**.

(4) (a) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section, the court hearing the case shall suspend the minor's driving privileges under Section **53-3-219**.

(b) Notwithstanding the requirement in Subsection (4)(a), the court may reduce the suspension period required under Section **53-3-219** if:

(i) the violation is the minor's first violation of this section; and

(ii) the minor completes an educational series as defined in Section **41-6a-501**.

(5) When a person who is at least 13 years old, but younger than 18 years old, is found by a court to have violated this section, the provisions regarding suspension of the driver's license under Section **78A-6-606** apply to the violation.

(6) When the court issues an order suspending a person's driving privileges for a violation of this section, the person's driver license shall be suspended under Section **53-3-219**.

(7) An offense under this section is a class C misdemeanor.

76-6-206. Criminal trespass.

(1) As used in this section, "enter" means intrusion of the entire body.

(2) A person is guilty of criminal trespass if, under circumstances not amounting to burglary as defined in Section **76-6-202**, **76-6-203**, or **76-6-204** or a violation of Section **76-10-2402** regarding commercial obstruction:

(a) the person enters or remains unlawfully on property and:

(i) intends to cause annoyance or injury to any person or damage to any property, including the use of graffiti as defined in Section **76-6-107**;

(ii) intends to commit any crime, other than theft or a felony; or

(iii) is reckless as to whether his presence will cause fear for the safety of another;

(b) knowing the person's entry or presence is unlawful, the person enters or remains on property as to which notice against entering is given by:

(i) personal communication to the actor by the owner or someone with apparent authority to act for the owner;

(ii) fencing or other enclosure obviously designed to exclude intruders; or

(iii) posting of signs reasonably likely to come to the attention of intruders; or

(c) the person enters a condominium unit in violation of Subsection **57-8-7(7)**.

(3) (a) A violation of Subsection (2)(a) or (b) is a class B misdemeanor unless it was committed in a dwelling, in which event it is a class A misdemeanor.

(b) A violation of Subsection (2)(c) is an infraction.

(4) It is a defense to prosecution under this section that:

(a) the property was open to the public when the actor entered or remained; and

(b) the actor's conduct did not substantially interfere with the owner's use of the property.

Amended by Chapter 334, 2010 General Session

Addendum B

Not Reported in N.W.2d, 2006 WL 2406246 (Minn.App.)
(Cite as: 2006 WL 2406246 (Minn.App.))

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS
UNPUBLISHED AND MAY NOT BE CITED
EXCEPT AS PROVIDED BY MINN. ST. SEC.
480A.08(3).

Court of Appeals of Minnesota.
STATE of Minnesota, Appellant,
v.
Deanna Lea MINER, Respondent.

No. A06-649.
Aug. 22, 2006.

Scott County District Court, File No. CR0518430.
Patrick J. Ciliberto, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, MN, for appellant.

David B. Boyce, Ramstad, Kennedy & Boyce, Shakopee, MN, for respondent.

Considered and decided by DIETZEN, Presiding Judge; TOUSSAINT, Chief Judge; and STONEBURNER, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge.

*1 The state appeals an order suppressing evidence, arguing that seizure of a “crack pipe” was valid under the “plain feel” exception and that the search that led to discovery of the pipe was also justified as incident to arrest. Because the record supports the validity of the search and seizure of the pipe as incident to arrest, we reverse and remand.

FACTS

Near midnight, Jordan police officers received a dispatch reporting a motor-vehicle theft in progress. The dispatcher stated that the stolen vehicle was a black Volkswagen Golf driven by Kevin Dugal and that respondent Deanna Lea Miner was involved in

the theft and was following Dugal in a rusty Chevrolet Suburban. The dispatcher also stated that Dugal and Miner had been using crack all day.

Within approximately 15 minutes after receiving this dispatch, police officer Brian Stolt located the Golf and the rusty Suburban parked on the side of the road. Dugal was standing by the Suburban, and Miner was in the Golf. Stolt drew his handgun and ordered Dugal and Miner away from the vehicles and onto their knees. Dugal and Miner complied.

Officer John Wamsley arrived and pat-searched Miner's outer clothing for officer safety. Wamsley felt an object that he later testified he immediately recognized as “consistent with” an illegal-narcotics pipe. Wamsley seized the pipe, which had a Brillo pad inside it with what appeared to be controlled-substance residue. Subsequent testing of the pipe and Brillo pad revealed a trace amount of cocaine. Miner was taken into custody and subsequently charged with controlled-substance crime in the fifth degree and petty misdemeanor possession of drug paraphernalia. After the arrest, the complaining witness, Dugal's daughter, declined to press charges.

The district court granted Miner's motion to suppress evidence of the pipe, concluding that although there was reasonable suspicion for a patdown for weapons, discovery of the pipe went beyond the scope of a weapons search. The district court found that there was no evidence of suspicion that Miner was under the influence of a controlled substance or in control of a vehicle, that Wamsley “did not testify as to his immediate recognition of this item as being illegal contraband,” and that the totality of the circumstances would not support a “strong and honest suspicion” that Miner had committed a crime. This appeal by the state followed.

DECISION

On appeal from a pretrial suppression order, the state must show that the suppression order will have a critical impact on the state's ability to prosecute the

Not Reported in N.W.2d, 2006 WL 2406246 (Minn.App.)
(Cite as: 2006 WL 2406246 (Minn.App.))

defendant and that the order constituted error. *State v. McGrath*, 706 N.W.2d 532, 538-39 (Minn.App.2005), review denied (Minn. Feb. 22, 2006). It is not disputed that suppression of the evidence precludes the state from being able to convict Miner of the charges against her; therefore, the state has met the critical-impact test.

“Where the facts are not in dispute, the issue of whether the district court's pretrial order is erroneous is a question of law, subject to de novo review.” *State v. Volkman*, 675 N.W.2d 337, 341 (Minn.App.2004). “A search incident to arrest is valid by itself and does not require any additional justification.” *State v. Varnado*, 582 N.W.2d 886, 892 (Minn.1998) (citing *United States v. Robinson*, 414 U.S. 218, 235, 94 S.Ct. 467, 477 (1973)). “The search ‘incident’ to arrest has been extended to include a search ‘precedent’ to arrest if the officer has probable cause to arrest at the time of the search.” *State v. Bauman*, 586 N.W.2d 416, 420 (Minn.App.1998), review denied (Minn. Jan. 27, 1999). In *Bauman*, we stated that a more descriptive name for such a search is “search incident to probable cause to arrest” because “[t]he focus is not on the arrest, but on whether probable cause to arrest exists before a search.” *Id.* at 421.

*2 In this case, the district court erred by concluding that the totality of the circumstances did not provide probable cause to believe that Miner had committed a crime.

[Courts] apply an objective standard for determining the lawfulness of an arrest or a search by taking into account the totality of the circumstances to determine whether the police have probable cause to believe that a crime has been committed, and if the objective standard is met, we will not suppress evidence or invalidate an arrest even if the officer making the arrest or conducting the search based his or her action on the wrong ground or had an improper motive.

State v. Perkins, 582 N.W.2d 876, 878 (Minn.1998) (quotation omitted).

“The test of probable cause to arrest is whether the objective facts are such that under the circumstances a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime

has been committed.” *State v. Kier*, 678 N.W.2d 672, 678 (Minn.App.2004) (quotation omitted). The police officers knew from dispatch that there was a report that (1) Dugal had stolen a VW Golf; (2) Miner was involved; (3) Dugal was driving the VW, and Miner was driving a rusty Suburban; and (4) both had been using crack all day. When Stolt located the vehicles, Miner was sitting in the stolen car.

Under the totality of the circumstances, a person of ordinary care and prudence could entertain an honest and strong suspicion that Miner was involved in felony car theft giving rise to probable cause for arrest. The fact that the complaining witness later declined to press charges and did not directly tell the officers, when they interviewed her after the arrest, that Miner was involved in the theft is irrelevant to the circumstances that existed at the time of the arrest. The audio recording of the complaining witness's 911 call is largely unintelligible, but several times the complaining witness uses the pronoun “they,” and she can be heard giving Miner's name and the description of the Suburban. It is undisputed that the dispatcher told the officers that Miner was involved in the theft. The district court erred by suppressing evidence seized incident to a lawful arrest.

Because we conclude that the search and seizure was justified as incident to arrest, we do not reach the state's argument that the search and seizure was also justified under the “plain feel” doctrine.

Reversed.

Minn.App.,2006.
State v. Miner
Not Reported in N.W.2d, 2006 WL 2406246
(Minn.App.)

END OF DOCUMENT

Addendum C

OGDEN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO OG 2009-70165 (CLOSED/ARRES)

3572 - 0 DRUG-AMPHETAMINE POSSESS

General Offense Information

Operational status : CLOSED/ARREST/BOOKED
Reported on : Sep-07-2009 (Mon.) 0147
Occurred on : Sep-07-2009 (Mon.) 0147
Approved on : Sep-07-2009 (Mon.) by : 532 - Sangberg, Scott
Report submitted by : 846 - Gorman, G Justin
Org unit : Uniform Squad 4
Down time : 234
Location : 627 CANYON VIEW DR
Municipality : OGDEN County : Weber County
District : O2 Beat : 41 Grid : LIN/ED
Felony/Misdemeanor : F
Bias : None (no bias)
Gang involvement : No
Family violence : NO

Offenses (Completed/Attempted)

Offense : #1 3572 - 0 DRUG-AMPHETAMINE POSSESS - COMPLETED

Location : Residence/Home

Offender suspected of using : None

Criminal activity : Possessing/Concealing

Offense : #2 3562 - 0 DRUG-MARIJUANA POSSESS - COMPLETED

Location : Residence/Home

Offender suspected of using : None

Criminal activity : Possessing/Concealing

Offense : #3 7399 - 26 PUB ORD-PUBLIC INTOXICATION - COMPLETED

Location : Residence/Home

Offender suspected of using : None

Offense : #4 3550 - 0 DRUG-NARCOTIC EQUIPMENT POSSES - COMPLETED

Location : Residence/Home

Offender suspected of using : None

Criminal activity : Possessing/Concealing

Offense : #5 3598 - 0 T-CASE - COMPLETED

Location : Residence/Home

Offender suspected of using : None

Related Event(s)

CP OG 2009-70165

AB OG 2009-9993

Related Person(s)

Arrestee #1: HANSEN, LAREE CHRISTENSEN
(Case Specific Information)

Sex : FEMALE

Pursuant to Rule 16(e)
of UCA 1953, the victim(s)
and witnesses identifying
information has been redacted
from the enclosed documents.

OGDEN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO OG 2009-70165 (CLOSED/ARRES)

3572 - 0 DRUG-AMPHETAMINE POSSESS

Race : Caucasian/White
Ethnicity : Non-Hispanic
Date of birth : Jul-01-1960
Address : 925 E 1100 N , OGDEN , Utah 84401
Phone Numbers: Home : (801)782-9335
Occupation : NONE
Marital status : Divorced
Language(s) spoken: English
Disability : Drug/Alcohol Addiction
Height : 5'06
Weight: 130 lbs
Complexion : Light
Build : Medium Fra
Hair color : Brown
Hair style : Long
Eye color : Blue
Facial hair : None
Additional remarks :

Pursuant to URCrP, Rule 16(e)
and UCA §77-38-6, the victim(s)
and witnesses' identifying
information has been redacted
from the enclosed documents.

CELL 725-2670, ALSO USES CHRISTENSEN AS LAST NAME

Master Name Index Reference

Arrestee #1: HANSEN, LAREE CHRISTENSEN
Sex : FEMALE
Race : Caucasian/White
Ethnicity : Non-Hispanic
Date of birth : Jul-01-1960

Linkage factors

Resident status : Resident
Condition : Consumed Drugs
Offense : 2204 - 0 BURG-NO FORCE ENTRY RESIDENCE - COMPLETED
Arrest date : Sep-07-2009 (Mon.)
Arrest type : Arrest/Booked-Chg Only
Armed with : Not Applicable

Charge Summary

Charge # 1
Offense date : Sep-07-2009 (Mon.) 0220
Offense : Pub Ord-Public Intoxication - COMPLETED
Charge statute : MD 76-9-701
Charge count : 1
Charge severity :
Related to General Offense# : OG 2009-70165

Charge # 2
Offense date : Sep-07-2009 (Mon.) 0220
Offense : Drug-Amphetamine Possess - COMPLETED
Charge statute : FE 58-37-8-MA
Charge count : 1
Charge severity :
Related to General Offense# : OG 2009-70165

Charge # 3
Offense date : Sep-07-2009 (Mon.) 0220
Offense : Drug-Marijuana Possess - COMPLETED
Charge statute : MD 58-37-8

OGDEN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO OG 2009-70165 (CLOSED/ARRES)

3572 - 0 DRUG-AMPHETAMINE POSSESS

Charge count : 1
Charge severity :
Related to General Offense# : OG 2009-70165

Charge # 4
Offense date : Sep-07-2009 (Mon.) 0220
Offense : Drug-Narcotic Equipment Possess - COMPLETED
Charge statute : MD 58-37A-5
Charge count : 1
Charge severity :
Related to General Offense# : OG 2009-70165

Complainant #1: SOTO, ROBERT JR JR
(Case Specific Information)

Sex
Race
Ethnicity
Date of Birth
Address
Phone
Place of Birth
Employment
Marital Status
Language
Citizenship
Disability
Height
Weight
Complexion
Build
Hair color
Hair style
Eye color
Handedness
Facial hair
Additional

Pursuant to URCrP, Rule 16(e)
and UCA §77-38-6, the victim(s)
and witnesses' identifying
information has been redacted
from the enclosed documents

Master Name Index Reference
Complainant #1: SOTO, ROBERT JR JR

Sex
Race
Ethnicity
Date of Birth

Linkage factors
Resident status : Resident

Property Ow #1: CHAVEZ, IRENE GARCIA ZAMORA

OGDEN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO OG 2009-70165 (CLOSED/ARRES)

3572 - 0 DRUG-AMPHETAMINE POSSESS

(Case Specific Information)

Sex
Race
Ethnic
Date of
Address
Phone Num
Place of
Occupation
Employer
Marital sta
Language
Citizenship
Disabil
Height
Weight
Comp
Build
Hair
Hair st
Eye co
Hand

Pursuant to URCrP, Rule 16(e)
and UCA §77-38-6, the victim(s)
and witnesses' identifying
information has been redacted
from the enclosed documents.

Master Name Index Reference

Property Ow #1: CHAVEZ, IRENE GARCIA ZAMORA

Sex
Race
Ethnic
Date of br

Linkage factors

Resident status : Resident

Related text page(s)

Document: INITIAL R/O FIELD

Author: 846 - Gorman, G Justin

Related date/time: Sep-07-2009 0403

On 09-07-2009 at 0149 hours Officer Froerer and I were dispatched on a burglary in progress complaint at 627 Canyon View DR.

The complainant, Robert Soto, reported to Dispatch that he was hiding in the bathroom of his grandmother's house because he believed there was someone inside the house. Robert kept hanging up and calling Dispatch back, reporting that he now saw 2 unknown males inside the residence trying to kick in the bathroom door to get inside.

Robert also said his grandmother is somewhere in the house and that she was the one who told him to lock himself in the bathroom.

I arrived checking around the residence finding all of the doors locked and all of the windows secured. No sign of forced entry was observed. I tried

OGDEN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO OG 2009-70165 (CLOSED/ARRES)

3572 - 0 DRUG-AMPHETAMINE POSSESS

to listen inside but I could not hear any noise inside. When Officer Froerer arrived I knocked on the front door and it was answered immediately by the home owner, Irene Chavez.

Irene was startled when she saw us at the door and asked what was wrong. I asked Irene what was going on inside the home and she told me "nothing is going on, why are you guys here".

I explained the situation to Irene and she told me that her grandson, Robert, was upstairs taking a shower. Irene invited us inside and escorted us upstairs where a male individual exited an upstairs bathroom wearing a towel around his waist.

The male stated his name was Robert Soto and he began explaining what had happened. Robert said he was in the bathroom and thought Irene had gone to sleep for the night. Robert stated he heard some noises outside the bathroom door so he called for Irene but he didn't hear her answer him. Robert stated he started getting scared because of "all the gang stuff that been going on" and thought they were after him.

Robert seemed very strange and kept pacing back and forth as he talked. I asked Robert if he was in a gang or on drugs and he said no. Irene told me that she never went to sleep and was up walking around the house which was what Robert had heard.

As I was speaking to Robert and Irene someone started banging loudly on the back patio door which scared Irene. Irene stated she thinks someone was really trying to break in now.

I went to the back door and observed a female individual peering inside through the glass door. I opened the door and the female stepped back and began walking around the small deck in quick jerky steps. The female was clutching a small black purse tightly to her body and kept looking around jerking her head back and forth.

I asked the female what she was doing and she said she was here to see Robert. I asked the female to sit down on a bench that was on the deck and asked her for her name. The female stated her name was Laree Hansen with a DOB of 07-01-60.

Laree kept squirming around on the bench and could not sit still. Based on Laree's movements and behavior, I observed that she appeared to be acting like someone under the influence of METH.

I asked Laree when the last time she used drugs was and she said it was a while ago. I asked Laree what drugs she was on right now and she stated she wasn't on any drugs. I asked Laree if she had any drugs in her purse and Laree immediately stood up off of the bench and started walking towards the door.

Irene apparently recognized Laree and yelled from inside the house "I don't want her anywhere around my house". I asked Laree to sit back down but she pushed past me and ran into the house heading inside to one of the upstairs bedrooms. I followed Laree inside the bedroom and I watched as Laree place her purse underneath the bed, then she stood up and acted like everything was normal.

OGDEN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO OG 2009-70165 (CLOSED/ARRES)

3572 - 0 DRUG-AMPHETAMINE POSSESS

Irene was yelling from behind me for Laree to get out of her house so I told Laree to get her purse. Laree picked up her purse from under the bed. Irene said she didn't want to pursue criminal charges against Laree and only wanted Laree out of her house. Officer Froerer and I escorted Laree outside. As Laree walked I noticed that she was swaying and couldn't seem to walk straight.

Once outside I asked Laree if she had used METH today and she said admitted she had. Based on Laree's actions and her admission of being under the influence of METH I placed Laree under arrest for Public Intoxication for being a danger to herself and others.

I searched Laree and her purse incident to arrest and inside Laree's purse was a small black wallet sized case with a zipper on it. I opened the case and found a discolored glass pipe with a bulb on the end of it that, based on my training and experience as a Police Officer, appeared to be a pipe commonly used to smoke METH with.

There was also a small plastic baggy that contained a white crystal substance that appeared to be consistent with METH, and another plastic baggy that contained a green leafy substance that looked and smelled consistent with Marijuana.

Numerous small plastic baggies with white residue where also found inside the case along with 3 small silver colored spoons that had a white residue on them.

I transported Laree to the Weber County Jail where I read Laree her Miranda Rights. Laree agreed to speak with me and told me that she and Robert smoked METH together a couple of hours ago at Robert's house.

Laree told me the white crystal substance was METH and the green leafy substance was Marijuana which were hers. Laree stated that she used the glass pipe to smoke METH with.

I questioned Laree about where she obtained the drugs from but she would not say. Laree then changed her story and said that Robert is the one who planted the drugs on her and that they belong to him.

I booked Laree into Jail for Public Intoxication, Possession of METH, Possession of Marijuana, and Possession of Drug Paraphernalia.

I booked the black case, the glass pipe, the plastic baggies, the spoons, the white crystal substance, and the green leafy substance into Evidence. The white crystal substance weighed approximately 0.4 grams and the green leafy substance weighed approximately 1.5 grams.

I tested the crystal substance with a Narcotic Identification Kit (NIK) which showed a positive result for METH.

All related paperwork was turned into Records. No further action taken.

Pursuant to URCIP, Rule 16(e)
and UCA §77-38-6, the victim(s)
and witnesses' identifying
information has been redacted
from the enclosed documents.

Clearance Information

OGDEN POLICE DEPARTMENT
GENERAL OFFENSE HARDCOPY

GO OG 2009-70165 (CLOSED/ARRES)

3572 - 0 DRUG-AMPHETAMINE POSSESS

General Information

Agency : Ogden

Cleared status : Arrest/Booked & Citations

Cleared on Sep-07-2009 (Mon.) Complainant/Victim notified : NO

Related Arrest Report: AB# OG 2009-9993

Arrestee: HANSEN, LAREE CHRISTENSEN

Date of birth : Jul-01-1960

Arrest Information

Status : CHARGED

Type of arrest : Arrest/Booked-Chg Only

Reason for arrest : Other

Arrest date : Sep-07-2009 (Mon.) 0220

Arrest agency : Ogden City Police

Arresting officers : 846 - Gorman,G Justin

Summary of facts :

UT15009707,PUB INTOX,POSS METH,POSS MARI,POSS PARA

Arrest Location

Address : 70165 CANYON VIEW RD

Municipality : OGDEN County : Weber County

Additional Arrest Information

Case screened : NO

Notify Victim on release: NO

Juvenile : NO

Armed with : Not Applicable

Diversion recommended : NO

Interpreter needed : NO

Rights given : NO

Marital status : Divorced

Mental exam required : NO

Statement taken : NO

Fingerprinted : NO Photo taken : NO

CD updated : NO

Family notified : NO by

Lawyer called : NO Meal given : NO Coffee given : NO

Arrestee's occupation : NONE

Detained : NO

Arrestee's occupation : NONE

Related General Offense report(s)

OG 2009-70165

Related CD#

13745

** END OF HARDCOPY **

Pursuant to CRCP, Rule 16(e)
and UCA §77-26-3, the victim(s)
and witnesses' identifying
information has been redacted
from the enclosed documents